

IN THE CIRCUIT COURT OF THE  
9<sup>th</sup> JUDICIAL CIRCUIT, IN AND FOR  
OSCEOLA COUNTY, FLORIDA

CIVIL JURISDICTION DIVISION

CASE NO.: 13-CA-02666-ON  
Florida Bar No.: 0894575

A. B.,

Plaintiff,

v.

OSCEOLA MENTAL HEALTH, INC.  
d/b/a PARK PLACE BEHAVIORAL  
HEALTH CARE,

Defendant.

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**MOTION FOR PARTIAL SUMMARY JUDGMENT ON CHARACTER  
OF SEXUAL BATTERY VICTIM**

COMES NOW the Plaintiff, A.B. and files this, her motion for partial summary judgment regarding the introduction of evidence of her consensual sexual activity, prior to her sexual battery; motion for protective order regarding discovery of same; and, motion to seal deposition as grounds therefore states:

**BACKGROUND**

1. At the time of the events alleged in the complaint, 16 year old A.B. was a ward of the state and was in foster care.
2. At some point, she became depressed over the fact that her biological mother was ill and had been hospitalized.
3. As a result, she was transported to the Defendant's facility for observation and assessment which is supposed to be a secured facility.
4. Upon arrival at the Defendant's facility, she was left alone and unsupervised in a waiting room with an unknown, 44 year old man.
5. The 44 year old man dragged her into a bathroom, locked the door and sexually assaulted

her.

6. At the time of the sexual battery she was under the care and supervision of the Defendant who had the responsibility and duty to properly supervise the patients in the facility and prevent this event from happening.
7. The assailant was charged with sexual battery on a minor and, ultimately, pled guilty to the charge. He is currently incarcerated.
8. During the course of discovery, defense counsel has, repeatedly, questioned A.B. about her consensual, sexual activity prior to the sexual battery. (See, for example, requests for admissions attached as exhibit "A" or A.B.'s deposition at pages 81, line 11 - page 87, line 2, filed in support of this motion).
9. This line of questioning and discovery is inappropriate and prohibited pursuant to the Florida Statutes; the Florida Rules of Evidence; and, case law and the Defendant should be prevented from further inquiry into this area; the Plaintiff's deposition should be sealed; and, the Defendant should be precluded from introducing any evidence of her prior, consensual sexual activity at trial.

#### **MEMORANDUM OF LAW**

10. Florida Statutes and Rules of Evidence protect a sexual battery victim's privacy from unwarranted public intrusion by establishing guidelines restricting the admissibility of evidence relating to the character of the victim. This prohibition is generally referred to as the "rape shield law."
11. Florida Statutes clearly establishes that "specific instances of prior consensual activity between the victim and any person other than the offender shall not be admitted into evidence."<sup>1</sup> FL Stat. §794.022(2).
12. Further, "notwithstanding any other provision of law, reputation evidence relating to the victim's prior sexual conduct or evidence presented for the purpose of showing that manner

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<sup>1</sup>The only exceptions to this prohibition involve situations which do not pertain to this case (i.e. to prove the assailant was not the source of semen; injury; pregnancy or disease; or when the consent of the victim is at issue.)

of dress of the victim at the time of the offense incited the sexual battery shall not be admitted into evidence . . .” Fl Stat. §794.022(3)

13. In situations involving an assailant 24 years old or older on a person who is 16 or 17, “the victim’s prior sexual conduct is not a relevant issue” in a prosecution under that section. Fl. Stat. §794.05(3). Therefore, due to the Plaintiff’s age at the time of this attack, consent is not an issue in the case sub judice.
14. The Florida Rules of Evidence also *specifically preclude* the introduction of reputation evidence of the victim’s prior sexual conduct in cases involving sexual battery. Florida Rules of Evidence §90.404(1)(b)(1).
15. The courts have consistently upheld the “rape shield law” and held that “evidence of a witness’s sexual relations with a person other than an accused, whether in a civil, criminal, or administrative context, is simply not relevant to the question of the witness’s credibility.” Department of Professional Regulation v. Wise, 575 So.2d 713, (Fla.App. 1 Dist., 1991). “Florida courts have agreed that past encounters do not shed light on whether a victim consented to engage in sex with the defendant unless a distinctive pattern of similar pattern is shown. The exception provided in the Rape Shield Law applies only when the victim’s behavior is so similar to the defendant’s version of the encounter that it indicates probable consent to the acts charges. The victim’s prior dating experiences or moral values are otherwise irrelevant.” Young v. State, 520 So.2d 370 (Fla.App. 3 Dist., 1990). See also, “McElveen v. State, 415 So.2d 746, (Fla. 1<sup>st</sup> DCA 1982); Hodges v. State, 386 So.2d 888, (Fla. 1<sup>st</sup> DCA, 1980), (“Evidence merely disclosing prior sexual activity or looseness of morals in that regard is not admissible under the statute. In order to be admissible, the evidence must be of such a nature as to give rise to a reasonable assumption that because the victim engaged in a certain disclosed pattern of conduct or behavior, the victim probably consented to the same activity with the accused”); Kaplan v. State, 451 So.2d 1386 (Fla. 4<sup>th</sup> DCA 1984), (Moreover, the pattern must be so distinctive and so closely resemble the defendant’s version of the encounter that it tends to prove that the complainant consented to the acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented.” and; Roberts v. State, 510 So.2d 885 (Fla. 1987).
16. Finally, any potential probative value regarding the Plaintiff’s consensual sexual activity,

prior to the sexual battery, is far outweighed by the prejudicial effect of that information and would only serve to confuse, mislead or unfairly sway the jury and should be precluded pursuant to Florida Rules of Evidence 90.403. (“[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.”)

17. In light of the above, the Plaintiff moves for an order granting the motion for partial summary judgment and:

- a. Sealing the Plaintiff’s deposition;
- b. Precluding the Defendant from propounding any further discovery regarding the Plaintiff’s consensual sexual activity, prior to the sexual assault; and,
- c. Precluding the Defendant from offering any evidence at trial of the Plaintiff’s consensual sexual activity, prior to the sexual assault.

#### **CERTIFICATE OF SERVICE**

HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished via electronic mail to Cory J. Person, Esq.: Primary [cperson@butlerpappas.com](mailto:cperson@butlerpappas.com), Secondary [eservice@butlerpappas.com](mailto:eservice@butlerpappas.com) this 13 day of February, 2014.

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By:   
MICHAEL J. ROTUNDO

IN THE CIRCUIT COURT OF  
THE NINTH JUDICIAL CIRCUIT IN  
AND FOR OSCEOLA COUNTY FLORIDA

A. B.,

CASE NO.: 13-CA-02666 ON

Plaintiff,

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OSCEOLA MENTAL HEALTH, INC.  
d/b/a PARK PLACE BEHAVIORAL  
HEALTH CARE,

Defendant.

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**DEFENDANT'S REQUEST FOR ADMISSIONS**

TO: Michael J. Rotundo, Esq.  
Ford & Dean, P.A.  
Suite 600, Turnberry Plaza  
2875 Northeast 191 Street  
Aventura, FL 33180

IN ACCORDANCE with the Florida Rules of Civil Procedure, and especially Rule 1.370 thereof, Plaintiff, A. B. is requested to admit each of the following numbered requests or respond thereto as required by said rule. Failure to respond within thirty (30) days shall be deemed an admission of each request.

1. Admit that your answer to Defendant's Interrogatory No. 1, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.

Exhibit "A"

2. Admit that your answer to Defendant's Interrogatory No. 2, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
3. Admit that your answer to Defendant's Interrogatory No. 3, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
4. Admit that your answer to Defendant's Interrogatory No. 4, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
5. Admit that your answer to Defendant's Interrogatory No. 5, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
6. Admit that your answer to Defendant's Interrogatory No. 6, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
7. Admit that your answer to Defendant's Interrogatory No. 7, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.

8. Admit that your answer to Defendant's Interrogatory No. 8, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
9. Admit that your answer to Defendant's Interrogatory No. 9, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
10. Admit that your answer to Defendant's Interrogatory No. 10, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
11. Admit that your answer to Defendant's Interrogatory No. 11, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
12. Admit that your answer to Defendant's Interrogatory No. 12, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
13. Admit that your answer to Defendant's Interrogatory No. 13, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.


14. Admit that your answer to Defendant's Interrogatory No. 14, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
15. Admit that your answer to Defendant's Interrogatory No. 15, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
16. Admit that your answer to Defendant's Interrogatory No. 16, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
17. Admit that your answer to Defendant's Interrogatory No. 17, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
18. Admit that your answer to Defendant's Interrogatory No. 18, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
19. Admit that your answer to Defendant's Interrogatory No. 19, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.



20. Admit that your answer to Defendant's Interrogatory No. 20, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
21. Admit that your answer to Defendant's Interrogatory No. 21, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
22. Admit that your answer to Defendant's Interrogatory No. 22, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
23. Admit that your answer to Defendant's Interrogatory No. 23, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
24. Admit that your answer to Defendant's Interrogatory No. 24, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.
25. Admit that your answer to Defendant's Interrogatory No. 25, under Certificate of Service date of September 10, 2013, was true and correct to the best of your knowledge, at the time you provided your answer for same.

26. Admit that prior to the subject incident you engaged in the use of illegal drugs.
27. Admit that prior to the date of the subject incident you consumed alcohol on more than one occasion.
28. Admit that prior to the subject incident you engaged in illegal use of prescription drugs.
29. Admit that prior to the subject incident you suffered from depression.
30. Admit that prior to the subject incident you had been diagnosed with depression.
31. Admit that prior to the subject incident you received counseling sessions for depression.
31. Admit that prior to the subject incident you engaged in consensual sexual intercourse with at least three males on separate occasions.

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP



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Attorneys For: Defendant

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been furnished to the above named addressee by E-Service on January 9, 2014.

  
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CORY J. PERSON, ESQ.

**NOTICE**

Notice is hereby given that should Plaintiff deny these admission requests, Defendant(s) may seek all reasonable costs and attorneys' fees necessary to prove these matters pursuant to Rule 1.380(c), Fla. R. Civ. P.